November 16, 2022

# P2: Initial Staff Report

### RE: Proposed Niagara Escarpment Plan Amendment PC 225 22

**On-farm Diversified Uses and Agricultural-related Uses in Escarpment Protection Area, and other agricultural-related policy housekeeping matters**

**Source:** Niagara Escarpment Commission (NEC)

**Area:** The entire Niagara Escarpment Plan (NEP) Area

### Proposal summary:

To amend the Niagara Escarpment Plan (NEP) to allow the opportunity for the development of on-farm diversified uses and agricultural-related uses outside of prime agricultural areas by amending the Escarpment Protection Area Permitted Uses to be consistent with the Escarpment Rural Area policy, and; to amend the NEP Part 2.7 policies respecting Development Affecting Natural Heritage to recognize that the development of certain agricultural uses may be compatible in Key Natural Heritage Features, under certain conditions. Additionally, to undertake a housekeeping-related amendment to Part 1 Escarpment Natural Area Permitted Uses to better align Ontario Regulation 828/90 exemption respecting a specific agricultural use with the Permitted Uses of the NEP.

### Purpose:

The purpose of this report is to provide the justification for the consideration of amendments to the NEP that would further refine and strengthen the framework for agriculture in the NEP Area while ensuring that the Purpose and Objectives of the Plan are upheld. To initiate an amendment, the NEC under Section 6.1(2.1) of the *Niagara Escarpment Planning and Development Act* (NEPDA) must be satisfied that the amendment is justified and worthy of consideration; however, even if the proposed amendment is justified at this stage, this is not an endorsement of the eventual approval of the amendment in whole or in part.

### Staff summary recommendation:

That the Commission instruct staff to prepare the proposed amendment PC 225 22 for circulation and notification in accordance with the provisions of Sections 7 and 10 of the *Niagara Escarpment Planning and Development Act*, and the recommendations of the report, based on the direction of the Commission on November 17, 2021.

1. **Background / Overview**

The 2015 Coordinated Land Use Planning Review resulted in the current 2017 NEP and included several changes to agricultural policies to better align with the Provincial Policy Statement (PPS, 2020), as well as the other provincial land use plans. On-farm diversified uses (OFDUs) and agriculture-related uses were introduced to the NEP as Permitted Uses, together with new Part 2 Development Criteria to guide these uses.

Notwithstanding these enhancements, members of the NEC, as well as select key agricultural stakeholders, have continued to express concerns that the agricultural policies of the NEP 2017 are inadequate in terms of supporting a viable agricultural system for the long term.

The 2017 NEP has now had the benefit of five years of implementation and staff and the Commission have been monitoring and documenting the outcomes, challenges, and lessons learned through early implementation. Staff presented the Commission with a NEP Agricultural Policies Amendment Scoping Discussion Paper at their meeting on November 17, 2021. The report was prepared to provide a consolidated summary of the agricultural discussions to date (since the Coordinated Land Use Planning Review), and to summarize the successes and challenges to implementation of the agricultural policies that have been observed since the 2017 NEP has been in operation, to provide a foundation for further discussion by the Commission on the need for and scoping of a potential NEP amendment related to agriculture.

At their meeting on November 17, 2021, the Commission directed staff:

1. To proceed with initiating a Niagara Escarpment Plan amendment to address the following:
   * Part 1.4.3.2 Escarpment Protection Area on-farm diversified uses and agriculture-related uses in prime agricultural areas.
   * Agricultural uses within Earth Science Areas of Natural and Scientific Interest.
2. To undertake further analysis of additional agricultural policy topic areas, for potential consideration in the scoping of a proposed Plan amendment:
   * Part 2.8 winery policies
   * Agricultural uses in key natural heritage features
   * Supporting the Agricultural System in the NEP Area

Staff is aware that the proposals presented herein do not reflect or address the full extent of the agricultural policy amendments that key agricultural stakeholders are seeking. While the proposals presented do address significant targeted concerns (i.e., Part 1.4.3.2 policy respecting OFDUs and ARUs in prime agricultural areas), additional areas of interest remain with agricultural stakeholders respecting viable agriculture and agri- tourism in the NEP Area.

Staff provides that these additional topic areas will continue to be discussed and given appropriate consideration, including with ministry partners and a broader range of agriculture stakeholders. Staff considers the current amendment proposals as ‘Phase 1’ and advancing the current amendment proposal would not preclude subsequent amendments from being considered.

Additionally, staff notes some of the changes being proposed by stakeholders (i.e., events), may involve regulatory and or legislative changes, which are beyond the scope of the amendment process and or may be considered urban uses that would be required by the Act to be addressed through the next Plan Review.

### Existing planning framework

#### Niagara Escarpment Planning and Development Act (NEPDA)

Sections 6.1(2.2) of the NEPDA identifies that no person or public body shall make an application or request to amend the NEP if the application or request relates to land that is within the land use designation of Escarpment Natural Area, Escarpment Protection Area, Mineral Resource Extraction Area or Escarpment Rural Area of the NEP and the application or request seeks to, a) re-designate the land to the land use designation of Minor Urban Centre, Urban Area or Escarpment Recreation Area of the Niagara Escarpment Plan; or b) make any other amendment to permit urban uses unless it is during the time of a Plan Review.

Staff finds that the amendment proposals for policy revisions respecting agricultural uses, OFDUs, and ARUs do not trigger the prohibition regarding “urban uses” and “urban designations” under the NEPDA*.* Escarpment Natural Area and Escarpment Protection Area designations come with their suite of Permitted Uses and policies, including provisions for agricultural uses, as set out in the NEP. Therefore, the proposed amendment, including the addition of policies to Part 2 Development Criteria, is

consistent with the NEPDA respecting urban uses and urban designations, and the NEC can consider the planning merits of this application under Section 6.1 of the NEPDA.

### Niagara Escarpment Plan

Agricultural Uses are identified as Permitted Uses in all Land Use Designations except the Escarpment Natural Area (where only existing agricultural uses, existing agriculture- related and existing on-farm diversified uses are permitted). The NEP Part 1.4.3.2 Escarpment Protection Area Permitted Uses identifies on-farm diversified uses and agriculture-related uses as Permitted Uses in the Escarpment Protection Area, *in prime agricultural areas* (emphasis added). A prime agricultural area is defined in the NEP as an area where prime agricultural lands predominate. This includes areas of prime agricultural lands and associated Canada Land Inventory Class 4 through 7 lands, and additional areas where there is a local concentration of farms that exhibit characteristics of ongoing agriculture. Prime agricultural areas may be defined by OMAFRA using guidelines developed by the province as amended from time to time.

Development Criteria in Part 2.8 Agriculture includes the objective to encourage agricultural uses in agricultural areas, especially in prime agricultural areas, to permit uses that are compatible with farming, and to encourage accessory uses that directly support continued agricultural uses. The policies in Part 2.8 require prime agricultural areas to be protected for long-term agricultural use.

New Part 2 Development Criteria were added in the 2017 NEP respecting the development of agriculture-related uses and on-farm diversified uses. The criteria work to allow the consideration for diversification of an agricultural operation to enable greater economic viability of the farm while ensuring that the uses remain compatible with the Escarpment environment and surrounding agricultural operations and other land uses.

The relevant NEP objectives and Development Criteria respecting agriculture are discussed in greater detail in Section D, Analysis & amendment considerations section below.

### Ontario Regulation 828/90 - Development Permit Regulation

Ontario Regulation 828/90, under the NEPDA, lists the classes of development that are exempt from the requirement of obtaining a Development Permit from the NEC, provided the criteria can be met. For example, O. Reg 828/90 specifically exempts general agricultural development, which is defined as a class of development whereby land, buildings, or structures are used for the purpose of forestry, cultivation of trees and

nursery stock, maple sugar harvesting, field crops, fruit farming, market gardening, dairying, animal husbandry, poultry raising, beekeeping, the operation of glass or plastic covered greenhouses, and such uses as are customarily and normally related to agriculture, but does not include: (a) special agricultural development, or b) the construction of an equestrian racetrack or sand ring or any class of development whereby land, buildings or structures are used for the purpose of an equestrian event or a horseback riding school. In order for the exemption criteria to be applicable, the use has to be identified as a Permitted Use under the respective Land Use Designations.

### Provincial Policy Statement (2020)

The Provincial Policy Statement (PPS) was last updated in 2020 and provides overall policy direction on matters of provincial interest related to land use and development in Ontario. Where the policies of provincial plans address the same, similar, related, or overlapping matters as the policies of the PPS, applying the more specific policies of the provincial plan satisfies the more general requirements of the PPS.

The PPS provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment. The PPS supports improved land use planning and management, which contributes to a more effective and efficient land use planning system.

A large percentage of the lands within the NEP Area may be described as rural in nature. The PPS speaks to both ‘rural areas’ and ‘rural lands’ within municipalities under Sections 1.1.4 and 1.1.5 respectively. Rural area policies relate to a system of lands and may include rural settlement areas, prime agricultural areas, etc., while rural land policies relate specifically to lands that are located outside settlement areas and outside prime agricultural areas. The municipalities within the NEP Area all have delineated settlement areas and a rural land base. The rural areas section of the PPS provides for the objective to direct development and growth to settlement areas where there is available infrastructure and community services.

Section 2.0 of the PPS identifies the province’s objectives respecting the long-term protection of natural heritage, water resources and cultural heritage, and archaeological resources for their economic, environmental, and social benefits. Part 2.1 requires that natural features and areas shall be protected for the long term and Part 2.1.2 identifies that the diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored, or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.

economy and promotes the protection of agricultural and other resource-related uses on rural lands. In prime agricultural areas, permitted uses and activities include agricultural uses, agriculture-related uses, and on-farm diversified uses. The PPS definition for agricultural use is consistent with the NEP (2017) definition.

Section 2.3 of the PPS speaks directly to how agricultural lands should be planned for throughout the province. Section 2.3.1 states: *Prime agricultural areas shall be protected for long-term use for agriculture.* Section 2.3.3.1 permits agricultural uses, agriculture-related uses, and on-farm diversified uses in prime agricultural areas; however, this section further clarifies that agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Additional development is only permitted if compatibility with agricultural operations can be demonstrated. Thus, the PPS requires that impacts on the broader agricultural system be considered when analyzing the appropriateness of a site-specific use. Section 2.3.4.1 discourages the creation of new lots in prime agricultural areas except in a few circumstances. These circumstances are incorporated under Part 2.4.20 of the NEP with limited revision.

### Greenbelt Plan (2017)

The *Greenbelt Act* authorized the preparation of the Greenbelt Plan, which was approved in February 2005 and updated in 2017 through the 2015 Co-ordinated Land Use Plan Review. The Greenbelt Plan Area includes all the NEP Area. The policies of the NEP are the policies of the Greenbelt Plan for the NEP Area except for the Open Space and Trails Policies set out in Section 3.3 of the Greenbelt Plan. The planning, construction, and maintenance of parkland, open space, and trails in the NEP Area must also comply with the policies in Section 3.3 of the Greenbelt Plan. Further, Section

5.6 identifies amendments to the NEP that remain governed by and are to be dealt with in accordance with the provisions of the *NEPDA*.

The Protected Countryside contains an Agricultural System that provides a continuous, productive, and permanent agricultural land base and a complementary agri-food network. The Agricultural System of the Greenbelt Plan is comprised of the agricultural land base (prime agricultural areas, including specialty crop areas, and rural lands), and the agri-food network, which has components (infrastructure, services, and assets) that support agricultural viability but is not a designation with a list of permitted uses. While the Greenbelt Plan identifies the boundaries of the specialty crop areas, it relies on official plans to further delineate prime agricultural areas and rural lands based on provincial mapping and guidance.

Rural lands are those lands outside of settlement areas that are not prime agricultural areas and are generally designated as rural or open spaces within official plans. A full

range of existing and new agricultural uses, agriculture-related uses, on-farm diversified uses, and normal farm practices are permitted in the Natural Heritage System for the Growth Plan and the Greenbelt Natural Heritage System. Although new agricultural buildings are allowed within the Natural Heritage System, other policies such as those regarding key natural heritage features continue to apply (i.e., Greenbelt Plan Part 3.2.2.1; A Place to Grow Parts 4.2.2.3, 4.2.3, and 4.2.4).

New buildings and structures are not subject to the Natural Heritage System development policies (Part 3.2.2.3) but are subject to the Key Natural Heritage Features and Key Hydrologic Features policies in Part 3.2.5. Similar to the NEP, the Greenbelt Plan prohibits development within Key Natural Heritage Features (KNHFs) of the Protected Countryside, with limited exceptions. Part 3.2.5.1 does not provide an exception for agriculture**,** so new buildings and structures for agricultural uses, agriculture-related uses, or on-farm diversified uses are not permitted in key natural heritage features or key hydrologic features**.**

However, expansions or alterations to existing buildings and structures for agricultural uses, agriculture-related uses, or on-farm diversified uses that are within key hydrologic features and key natural heritage features, and their associated vegetation protection zones, are permitted, provided that it can be demonstrated that several criteria are met including that there is no alternative to developing in the feature, and that where required, that the expansion or alteration in the feature is minimized. In the vegetation protection zone, the expansion or alteration is required to be directed away from the feature to the maximum extent possible. The impact of the expansion or alteration on the feature and its functions is minimized and mitigated to the maximum extent possible (Greenbelt Plan 4.5.5, Growth Plan 4.2.3.1f).

### Growth Plan for the Greater Golden Horseshoe

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (Office Consolidation, 2020) (the “Growth Plan”) applies to lands within the Greater Golden Horseshoe (GGH) and provides direction on how to manage growth. Emphasis is placed on intensification and redevelopment in existing settlements and built-up areas rather than sprawl or haphazard expansion that requires new municipal services (e.g., sewers and water).

The Growth Plan and Greenbelt Plan are intended to work together. Areas to be protected in the GGH were established first (in the Greenbelt Plan) and then areas, where development could be considered, were identified second (in the Growth Plan). Both the Growth Plan (Section 1.4) and its enabling legislation (*Places to Grow Act, 2005*), indicate that in considering the Growth Plan in relation to other provincial plans and policies (e.g., the NEP), the planning direction to be followed is the one that “provides more protection to the natural environment or human health”. In considering

the hierarchy of provincial plans and policies governing this area and the provisions within those documents, the greatest protection to the natural environment and human health (particularly the natural environment), is accomplished most effectively through the policies and appropriate land use designations of the NEP.

The Natural Heritage System of the Growth Plan is not identified in the NEP Area.

### Oak Ridges Moraine Conservation Plan (ORMCP)

The ORMCP provides land use planning direction to protect the Moraine’s ecologic and hydrologic features and functions. Although the Oak Ridges Moraine is also part of the Greenbelt, the Greenbelt Plan specifies that the policies of the ORMCP continue to apply in the Greenbelt Plan area. The Oak Ridges Moraine contains many landform types that affect the ecological and hydrological character of the moraine. The Plan’s Natural Core Area and Natural Linkage Area designations are considered the natural heritage system for the Moraine. These areas have the highest concentration of natural heritage features and provide a continuous east-west ecological connection across the entire Plan Area.

The Plan also identifies key natural heritage features (such as ANSIs and woodlands) and key hydrologic features (such as kettle lakes and springs). In Natural Core Areas, Natural Linkage Areas, and Countryside Areas, only very restricted new resource management, recreational and infrastructure uses are permitted within these features. Development near these key natural heritage features and key hydrologic features is only allowed if it will not adversely affect these features. Areas with significant landscape character are identified as Landform Conservation Areas, and development is required to meet stringent review standards to ensure protection.

In the context of the ORMCP, prime agricultural areas may be found within the Countryside Area designation, but portions of the Natural Core Area and Natural Linkage Area designations may also include prime agricultural areas. Prime agricultural areas in the ORMCP are to be identified in accordance with the broader Agricultural System, once established, recognizing both the agricultural land base and Agri-food Network components. Linkages to the Agricultural System outside of the Oak Ridges Moraine Area should also be considered.

### Regional and local planning context

The role of municipalities in supporting the Agricultural System for the GGH as identified in the Growth Plan for the Greater Golden Horseshoe is to update prime agricultural area mapping in accordance with the provincial direction and to develop economic development programs and other support for agriculture with the intent to sustain and enhance the Agricultural System such as through regional agri-food strategies and other

economic incentives and approaches, agricultural advisory committees, and agrologist/dedicated agricultural support staff (these programs would apply within NEP Area). The NEC continues to consult with Escarpment municipalities to ensure municipal agricultural policies are considered in NEC decision-making. However, the provincial mapping of the Agricultural System prevails over existing municipal mapping until municipalities have updated their official plans in accordance with the province’s Implementation Procedures.

The NEP Part 2 Development Criteria are used as minimum standards for assessing the conformity of local official plans, secondary plans, and, where applicable, zoning by- laws and for administering site-plan control approvals. If an official plan, secondary plan, zoning by-law, or other planning approval is silent on one or more Development Criteria included in the NEP, the Development Criteria of the NEP still apply.

### Provincial Guidelines

To assist with the implementation of its policies and plans, the province has released several guidelines and technical supporting documents outlining best practices to be employed in managing agricultural resources. The following guidelines are relevant to the review of NEP agricultural policies

### Guidelines of Permitted Uses in Ontario’s Prime Agricultural Areas, 2016, Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA), Publication 851.

OMAFRA released the Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas Guidelines in 2016. These Guidelines are intended to support the interpretation of the PPS (2020) agricultural policies. The guidelines are clear in stating they are best practices and are not prescribed standards that must be met. While the OMAFRA Guidelines are available to support the interpretation of related policies in the PPS, it is important to remember that these Guidelines must still be viewed through the lens of the NEP, and it should be recognized that provincial plan policies (including the NEP), take precedence over the PPS to the extent of any conflict. NEC staff have consulted with OMAFRA on several occasions to get support for policy and guideline interpretation and implementation.

Additional supporting documents and Guidelines for the implementation of agricultural policies include:

* + - Implementation Procedures for the Agricultural System in Ontario’s Greater Golden Horseshoe, Feb 2018”, OMAFRA, Publication 856
    - Agricultural System Mapping Method, January 2018, OMAFRA, Technical Document
    - Template for Agricultural Land Base Refinements in the Greater Golden Horseshoe, OMAFRA 2018.
    - Agricultural Impact Assessment (AIA) Guidelines (Draft), March 2018, OMAFRA

### Chronology of agriculture-related staff reports, Development Permit Applications, and Plan amendments

**June 2017**: New NEP is released. New and updated agricultural policies related to agriculture (e.g., on-farm diversified uses, agriculture-related uses).

**November 2017**: Commission passes a motion directing staff to investigate how the NEP can address agriculture-related uses, including rural density transfer, farm labour housing, secondary dwelling relating to the agricultural industry, farm succession planning, agricultural labour shortages, and other issues applicable to the NEC involvement with agricultural lands. The Chair writes to the Minister informing them of the Commission’s concerns and related motions regarding the NEP’s agricultural policies.

**February 2018**: Province releases “Implementation Procedures for the Agricultural System in Ontario’s Greater Golden Horseshoe” that includes Agricultural System mapping.

**March 2018:** Minister writes Chair advising of extensive consultation and consideration of provincial policies in the development and approval of new NEP and expresses concern with re-examining NEP policies so soon after a comprehensive review. The Minister requests that the Commission allow for the updated Plan to be implemented over a three-year period and report back with an assessment of the lessons learned through early implementation. The Minister also reminded the Commission of its mandate to uphold the purpose and objectives of the Plan and Act and to make decisions in accordance with the policies of the Plan.

**April 18, 2018:** NEC staff report was presented to the Commission to provide information and context in response to the Commission’s motion made in November 2017. The Report included background regarding Ontario’s land use planning framework, the Coordinated Provincial Land Use Planning Review, and the NEPDA. The report highlighted the need for guidelines and policies released by the province to be considered within the NEP through the lens of the purpose and objectives of the NEPDA and NEP. The Commission rescinds its motion in November 2017 after considering the Minister’s letter.

**February 2020:** Region of Niagara has a planning consultant undertake a review of NEP agricultural policies and implications to wineries. The consultant identifies several challenges with NEP policies.

**October 2020:** The Chair and Director meet with Ontario Craft Winery Council President, who express concerns that NEP agricultural policies do not adequately support the wine sector.

**September 15, 2021:** NEC staff presented an Information and Discussion Report on NEP Agricultural Policies to Commission. The report provided a high-level background of the NEP agricultural policies and highlighted areas where NEC staff have expressed concerns regarding the policies and sought further direction from the Commission. The Commission requested staff return to the November (2021) policy meeting with a review and analysis of the agricultural policies of the NEP for the Commission’s review and consideration.

**May 19, 2021:** Staff Report on Policy Guideline Development for Temporary Dwelling Units Accessory to Agricultural Uses presented to the Commission. The Report provided the background and context setting for the development of NEP Guidelines.

**June 2021:** NEC Director and senior staff meet with OCW Council to share information on the development of Policy Guidance. Council requests the opportunity to provide further input as Policy Guidance material is being developed.

**November 17, 2021:** NEC staff presented a Staff Report on NEP agricultural policies to the Commission, including an analysis of the decisions on Development Permit Applications for agricultural uses since the 2017 NEP came into effect. Following a review and discussion of agricultural policies, the Commission directed staff to proceed with initiating a Plan Amendment respecting Part 1.4.3.2 Escarpment Protection Area ARUs and OFDUs in prime agricultural areas, and agricultural uses in Earth Science Areas of Natural and Scientific Interest. Additionally, the Commission directed staff to continue to undertake further consideration and review of additional agricultural policy topic areas. The Chair wrote to the Minister to report on the Commission’s experience and concerns regarding agricultural policies of the NEP and requested that staff defer the preparation of policy guidance related to agricultural policies until the Commission has considered the matter further.

**September 2022:** NEC Director and Senior Staff meeting with OCW Council to update progress on scoping of an agricultural policy amendment proposal and Guidance material.

**October 2022:** OCW and Ontario Federation of Agriculture (OFA) provide submissions respecting revisions to the NEP agricultural policies to the NEC for consideration and request delegations to the Commission at their November 2022 policy meeting.

**Development Permit Application N/A/2020-2021/748** was submitted in March 2021, to construct a 1.5-story, ± 185.8 sq m (± 2000 sq ft) storage barn, with a height to peak of ± 6.1 m (± 20 ft), on an existing 3.48 ha (8.6 ac) lot to be reconfigured through a proposed boundary adjustment. Parcel A would be reconfigured from a 3.5 ha (8.6 ac) to ± 5.1 ha (± 12.7 ac) lot and would contain the existing dwelling, tree farm operation, and proposed barn. Parcel B would be reconfigured from a 2.1 ha (5.4 ac) to ± 0.6 ha (± 1.4 ac) lot and would remain vacant. Staff recommended refusal on the basis that the subject property is within an Earth Science Area of Natural and Scientific Interest (ANSI), which is considered a key natural heritage feature by the Niagara Escarpment Plan (NEP). Agriculture is not listed as an exception to the prohibition on development within key natural heritage features. The Commission approved the application, with conditions of approval, in August 2021, noting that Development Permit #8139/N/A/2003-2004/358 for a barn had been approved previously (under the previous NEP).

**Development Permit Application H/C/2021-2022/17** was submitted to establish an on- farm diversified use (agri-tourism), consisting of pick your own lavender, and viewing opportunities, and to establish a 1,572 sq m (16,920.86 sq ft), 45-car parking area, on an existing 8.44 ha (20.85 ac) lot that supports a lavender farm, farm produce stand, and single dwelling. The application was recommended for refusal by staff as the subject property was not within a prime agricultural area in accordance with Part 1.4.3.2 of the NEP. The Commission approved the Development Permit application as submitted, subject to conditions of approval. The Commission’s decision was informed by Halton Region comments, which confirmed that the subject land exhibits characteristics of ongoing agriculture and that the Region is contemplating redesignating the subject project to a prime agricultural area through the Region OP review.

**Development Permit Application S/A/2020-2021/469** was submitted in December 2020, to establish a lavender and rose cultivation farm and on-farm diversified use (agri- tourism). The proposal included the processing and distilling of lavender, a retail outlet, and parking area. Staff recommended refusal of the OFDU aspects (parking, farm tours), as the property is not mapped as a prime agricultural area and OFDUs are therefore not Permitted Use as per Part 1.4.3.2. Staff recommended approval of the agricultural and home industry/occupation components of the proposal. The Commission approved the Development Permit application as submitted, subject to conditions of approval, for the following reasons: the applicant proved through an independent agrologist that the land is prime agricultural land; the proposal’s

compatibility with other agricultural uses and no negative impacts on Escarpment scenery; and the exemption of the land designation is an option available at the County of Simcoe. The Commission decision was appealed, and the matter is now scheduled for a Hearing with the Ontario Land Tribunal.

**Development Permit Application N/R/2018-2019/67** was submitted in April 2018, to construct a 1-story ±491.4 m² (±5,289 ft²) single dwelling with a maximum height to peak of ±8.84 m (±29.0 ft.), a 2-story, ±180.6 m² (±1,944 ft²) agricultural structure (horse barn) with a maximum height to peak of ±6.4 m (±21.0 ft.), septic system, well, driveway, and associated site alteration including the removal of approximately 1.21 ha of trees (tree plantation) to facilitate the creation of pasture land (paddocks, riding ring) on a 4.0 ha (10.0 ac) vacant parcel. NEC staff recommended refusal of the application on the basis that the horse barn, riding ring, and pastureland were proposed within a Significant Woodland, which is considered a key natural heritage feature by the NEP. Agricultural uses are not listed as an exception to the prohibition on development within key natural heritage features. The Commission approved the application, subject to conditions of approval, for the following reasons: the wooded area was established as a plantation intended for harvesting; as identified in the NEC staff report, agro-forestry is included in the definition of agriculture in the NEP; and the plantation was not intended to form part of the significant woodland. Additionally, the Commission noted that harvesting of the plantation would be permitted under the NEP, and information has been provided demonstrating that the plantation area should not be considered part of the significant woodland.

### Analysis / Amendment considerations

#### Does the proposed Amendment satisfy and reflect the purpose and objectives of the NEPDA?

1. The purpose of the Act is, “to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with the natural environment”.
2. The objectives of the Act and Plan are to:
   * protect unique ecologic and historic areas;
   * maintain and enhance the quality and character of natural streams and water supplies;
   * provide adequate opportunities for outdoor recreation;
   * maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;
   * ensure that all new development is compatible with the purpose of the Act;
   * provide for adequate public access to the Niagara Escarpment; and,
   * support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the *Planning Act*.

One of the seven objectives of the *NEPDA* and the NEP speaks to *maintaining and enhancing the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry, and by preserving the natural scenery.* This objective is foundational to achieving the Purpose of the Plan and the Act; *to provide for the maintenance of the Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment.* Compatible farming is therefore considered as a mechanism to achieve an objective of the NEP, but it is not a stand-alone objective, nor is it central to the environment-first principle of the NEP. Additionally, agricultural land, from a planning perspective, may act as a buffer to protect significant or sensitive natural features found on the Escarpment.

Compatible farming and forestry may limit the types of farming and forestry operations on the Escarpment, in order to be consistent with the Purpose and Objectives of the NEP. In other words, farming and other forms of compatible development *may* take place within the NEP area if they can demonstrate compatibility and support the Purpose and objectives of the NEP. This context may assist in understanding the lens that is applied to proposed development in the NEP Area, versus those areas outside the NEP Area, where limitations may not be necessary or appropriate.

*Permitted Uses in Escarpment Protection Area Part 1.4.3.2*

Within the NEP Area, prime agricultural areas and “rural” areas within the agricultural land base are treated differently within the Escarpment Protection Area and Escarpment Rural Area land use designations. NEP Permitted Use policy 1.4.3.2 identifies that on- farm diversified uses (OFDUs) and agricultural-related uses (ARUs) are permitted *within prime agricultural areas* in the Escarpment Protection Area, while OFDUs and ARUs are permitted in non-prime agricultural areas within the Escarpment Rural Areas.

A prime agricultural area is defined in the NEP as *an area where prime agricultural lands predominate. This includes areas of prime agricultural lands and associated Canada Land Inventory Class 4 through 7 lands, and additional areas where there is a local concentration of farms that exhibit characteristics of ongoing agriculture. Prime agricultural areas may be identified by the Ontario Ministry of Agriculture and Food using guidelines developed by the province as amended from time to time. A prime agricultural area may also be identified through an alternative agricultural land evaluation system approved by the province.*

As stated in the Introduction, Landscape Approach section of the NEP, the agricultural land base is comprised of prime agricultural areas including specialty crop areas, as well as rural lands where active agricultural and related activities are ongoing. In the context of the NEP, prime agricultural areas are frequently found within the Escarpment Rural Area land use designation, but prime agricultural areas are not excluded from being identified within the other land use designations. In the context of implementing the NEP, it is important to understand that prime agricultural areas in the NEP Area should be identified in accordance with the broader Agricultural System once established, recognizing both the agricultural land base and the agri-food network components.

Prime agricultural areas are not to be identified on an ad hoc basis and must be done in a manner consistent with OMAFRA’s [Implementation Procedures for the Agricultural](http://www.omafra.gov.on.ca/english/landuse/imp2019.pdf) [System in Ontario’s Greater Golden Horseshoe](http://www.omafra.gov.on.ca/english/landuse/imp2019.pdf)[1](#_bookmark0). The exercise of refining agricultural land base mapping is typically undertaken by a municipality through the municipal Comprehensive Review or Official Plan review process and approved by the Ministry of Municipal Affairs and Housing (MMAH). A Land Evaluation and Area Review (LEAR) or an Agricultural Land Evaluation System (ALES) study may be conducted to help identify prime agricultural areas or the [agricultural land base](http://www.omafra.gov.on.ca/english/landuse/agri-landbase.htm) more broadly, for designation in official plans.

Not all municipalities in the NEP Area include prime agricultural area mapping in their Official Plans (e.g., Grey County), which also creates challenges to their identification and to implementation of NEP Part 1.4.3.2, which requires the identification of prime agricultural areas. Again, the NEC cannot identify or designate lands as prime agricultural areas on a site-specific, individual application basis.

Limiting OFDUs and ARUs to be considered only in prime agricultural areas in the Escarpment Protection Area designation was not a recommendation advanced by NEC staff or the Commission during the time of the 2015 Coordinated Land Use Planning Review. The underlying policy intent for these uses, as made clear through provincial policy, is to provide the farming community with the services and income-generating opportunities to ensure the ongoing viability of agricultural uses, regardless of whether the operation is situated in an identified prime agricultural area or other rural lands.

Rural lands outside of prime agricultural areas play an important role in the Agri-food system.

1 Ontario Ministry of Agricultural, Food and Rural Affairs. 2020. Implementation Procedures for the Agricultural System in Ontario’s Greater Golden Horseshoe. Supplementary Direction to A Place to Grow: Growth Plan for the Greater Golden Horseshoe. Queen’s Printer for Ontario. Toronto, ON. Publication 856.

It is NEC staff’s understanding that the current Part 1.4.3.2 Escarpment Protection Area policy emerged through the 2015 Coordinated Land Use Planning Review, as a means to support the implementation of the higher-level Plan Purpose and Objectives. The underlying intention, as understood by NEC staff, was to prevent the potential for the proliferation of some of the more intensive types of large-scale OFDUs and ARUs (e.g., large-scale grain elevators, feed mills) on the Escarpment rural landscape, as such uses could result in a conflict with the Purpose of the NEP respecting the maintenance of open landscape character and the Objectives respecting scenic quality. Within the context of the NEP, the permitted uses of OFDUs and ARUs are accompanied by Development Criteria that must be met, including gross floor area criteria, to ensure that such development does not override the primary agricultural use of the land and can continue to meet the Purpose and Objectives of the NEP. Additional Development Criteria in Part 2.13 Landform Conservation would also be required to be met, ensuring landform conservation, and reviewing built form from a visual and environmental perspective to ensure it is compatible with the Escarpment environment and does not dominate the landscape.

Agricultural uses in Key Natural Heritage Features (KNHFs)

*Agriculture proposed in Earth Science Areas of Natural and Scientific Interest*

Areas of Natural and Scientific Interest (ANSIs) are areas of land and/or water containing natural landscapes or features that have been identified as having life science and/or earth science, values related to natural heritage protection, scientific study, or education. ANSIs are identified as provincially significant by the MNRF, using evaluation procedures established by the province, and amended from time to time.

ANSIs vary in their type and level of significance. Earth Science ANSIs are geological in nature and consist of some of the most significant representative examples of the bedrock, fossil, and landforms in Ontario and include examples of ongoing geological processes.

The NEP Part 2.7 identifies Key Natural Heritage Features (KNHFs), which include both Life Science and Earth Science ANSIs. NEP Part 2.7 prohibits development within identified KNHFs, with limited exceptions for the development types listed in Part 2.7.1, and subject to meeting applicable Development Criteria. While accessory uses/facilities to single dwellings are identified as an exception to the prohibition of development within Earth Science ANSIs, agriculture/agricultural uses are not included in the list of exceptions to the prohibition of development within an Earth Science ANSI.

Notably, neither the Greenbelt Plan (GP) nor the Oak Ridges Moraine Conservation Plan (ORMCP) includes Earth Science ANSIs as KNHFs (the list includes Life Science

ANSIs), although the ORMCP does include additional policies to protect Earth Science ANSIs from certain types of development within designated areas with significant landscape character called Landform Conservation Areas.

Earth Science ANSIs are generally understood to be less sensitive to general forms of development and site alteration than Life Science ANSIs. Depending upon the values for which an ANSI was designated and the sensitivity of the ANSI feature, in principle, agriculture and accessory uses to agriculture *may* be acceptable forms of development that would generally not conflict with the maintenance of the landform, provided best management practices are employed. It is recognized that similar to when permitted types of development are proposed within other key natural heritage features (e.g., a single dwelling in a significant woodland), there may be instances where technical studies (e.g., hydrology, karst), would be required to demonstrate compatibility with the feature and its functions. Some Earth Science ANSI features like the Fonthill Kame, may be considered an Escarpment related landform, and as such, agricultural development would still be required to ensure that the Kame feature is maintained and enhanced, throughout the planning, design, and construction.

The Commission has been presented with one DPA to date (see related files section above), that staff recommended refusal of the application on the basis that the agricultural development (a barn), was proposed within an identified Provincially Significant Earth Science ANSI (Fonthill Kame-Delta ANSI). Designated Provincial ANSIs have a “checklist” that documents the values for which the ANSI was identified, as well as information on types of activities that have the potential to impact the feature. In this specific DPA example, the checklist identified that much of the Earth Science ANSI feature was already in agricultural production, and that provided certain mitigation measures were taken (e.g., avoiding alteration of contours), agriculture was identified as an activity that was unlikely to cause a negative impact to the ANSI feature.

The MNRF was consulted and did not express any concerns with the proposed development, provided that care was taken to ensure that the feature was not impacted by the proposed development. Regardless, the current NEP policy (Part 2.7.1), does not provide for an exception for agricultural uses to the prohibition of development in a KNHF, and this necessitates a staff recommendation of refusal. The Commission did not support the staff recommendation in this instance and approved the application on the basis that the agriculture was an existing use and the barn had previously been approved on the subject property through a previous DPA (however staff notes this Permit, which expired was assessed under the previous 2005 NEP).

Therefore, NEC staff is proposing an amendment to the Part 2.7 policies to allow consideration for the development of agricultural uses, agricultural-related uses and on- farm diversified uses in Earth Science ANSIs, provided conditions are met and subject to all other applicable Development Criteria.

As identified previously, Ontario Regulation 828/90 provides for general agricultural development to be exempt from requiring a Development Permit (if identified as a Permitted Use in Part 1 of the NEP), provided all identified criteria are met. If a use is identified as being a Permitted Use in Part 1 of the NEP, the development may not require a Development Permit, and therefore may not be assessed against the Part 2 criteria respecting natural heritage features.

*Agricultural uses in (other) Key Natural Heritage Features*

The Commission has been presented with DP applications where staff has recommended refusal on the basis that the development was proposed within a KNHF (namely a Significant Woodland), and as provided in the Earth Science ANSI discussion above. The NEP Part 2.7.1 does not provide for an exception for agricultural uses in KNHF (provided a DP is required).

Notwithstanding the issue identified specific to agricultural uses proposed within Earth Science ANSIs, as described above, staff notes that the general NEP policy approach of prohibiting new agricultural development in all other KNHFs (e.g., significant woodlands, significant wildlife habitat), is consistent with the policies for agricultural development concerning KNHF and key hydrologic features described in the Greenbelt Plan, Growth Plan, and ORMCP. Staff maintains that the current policy in Part 2.7 is in keeping with the “environment-first” principle of the NEP. Farming and other forms of compatible development *may* take place within the NEP Area, only if the use has been demonstrated to support the Purpose and Objectives of the NEP.

However, as described in Section B Greenbelt Plan above, staff observes that, unlike the NEP, the Greenbelt Plan and Growth Plan do provide policies that support consideration of expansion of *existing* buildings and structures for agricultural uses, agricultural-related uses, and on-farm diversified uses (emphasis added). Greenbelt Plan Part 4.5.5 Existing uses, provides that expansions or alterations to existing buildings and structures for agricultural uses, agricultural-related uses, or on-farm diversified uses may be considered in KNHFs and key hydrologic features and their associated vegetation protection zones provided that it can be demonstrated that there is no alternative, and the expansion or alteration in the feature is minimized and, in the vegetation protection zone, is directed away from the feature to the maximum extent

possible, and the impact of the development on the feature and its functions is minimized and mitigated.

The NEP Part 2.7.1 provides exceptions to the general prohibition of development within KNHFs for single dwellings and accessory facilities if disturbance can be minimized and temporary. The NEP works on an avoidance first principle with staff working with applicants to determine first and foremost if citing the development in the feature can be avoided through alternate siting and design. Where unavoidable, it must be demonstrated that impacts can be minimized which may require a natural heritage evaluation or equivalent study.

While staff maintains that the current NEP policies respecting the prohibition of new agricultural uses (requiring a Development Permit), are consistent with the other provincial plans, staff is proposing additional NEP policies that would provide an opportunity for the expansion of existing agricultural uses, in certain key natural heritage features consistent with the other provincial plans and provided the test of minimal impact can be met.

Staff finds that the proposal for the introduction of policy provisions allowing consideration of the expansion of existing agricultural uses in key natural heritage features (outside of wetlands), is consistent with the Purpose and Objectives of the Plan. Part 2.3 Existing Use Development Criteria (as well as all other applicable Development Criteria) would also apply to such applications. The proposed new policy provision would maintain the level of protection the current NEP provides for all Key Hydrologic Features (including all wetlands) in the NEP Area, which is consistent with the Purpose and Objectives of the Plan.

While Staff cautions that site-specific, individual development proposals should not be used as the basis to drive Plan-wide policy review and/or change, in the site-specific examples highlighted, the applications described have brought attention to the policy conflict / unintended policy implication that has broader Plan-wide implications, and this is the basis for the amendment proposals being presented by staff for consideration.

*Maple syrup harvesting in the Escarpment Natural Area*

As noted previously, O. Reg. 828/90 provides exemptions from the requirement for a Development Permit for some forms of general agricultural development, provided the identified criteria are met. Section 5 of the Regulation identifies that the identified classes of development are exempt from the requirement of obtaining a Development

Permit if the use is listed as a Permitted Use under the Land Use policies of the NEP and determined to not conflict with a Development Permit issued under the Act.

The Escarpment Natural Area designation only permits existing agricultural uses, on- farm diversified uses, and agricultural-related uses. No new agricultural uses are permitted, in keeping with the objectives of this designation, to protect and where possible enhance the most sensitive natural and scenic resources of the Escarpment.

Maple sugar harvesting is identified in the definition of general agricultural development in Reg. 828/90 and maple syrup production is defined as an agricultural use in the NEP. Over the years, NEC staff have received inquiries and/or applications for the tapping of trees in the Escarpment Natural Area designation. Staff has been unable to confirm an exemption for such a use, as the O. Reg. 828/90 exemption provision for general agricultural development is not applicable, given that agricultural development/(new) agricultural uses are not identified as a permitted use in the Escarpment Natural Area designation. Staff is also unable to process the Development Permit Application with a favorable recommendation to support the use, again, given it is not identified as a Permitted Use in Part 1.3.3.

Maple sugar harvesting (i.e., the tapping of the maple trees to collect the sap and running of lines between trees), is generally understood to be non-invasive in nature. Permitting this specific and limited aspect of maple syrup production would not offend the objectives of the Escarpment Natural Area designation. The policy amendment proposes to introduce maple sugar harvesting as a permitted use in Part 1.3.3 Escarpment Natural Area. The permitted use would be restricted to the harvesting of sap exclusively, and not include any production facilities. Such production facilities would be required to be located outside of the Escarpment Natural Area designation. Introducing maple sugar harvesting as a permitted use in the Escarpment Natural Area is considered a housekeeping matter that would enable the O. Reg. 828/90 exemption to be applicable.

### Known Stakeholder Positions

Significant input from agricultural stakeholder groups and the farming community, in general, was received during the 2015 Co-ordinated Land Use Planning Review. Staff and the Commission considered all the submissions in making its recommendations to the government. This consultation resulted in a greater range of Permitted Uses in Escarpment rural areas and more flexible winery policies. Notwithstanding these positive outcomes, there remains concern by agricultural stakeholders that the revisions have not gone far enough to

*Ontario Craft Wineries*

The Ontario Craft Wineries (OCW) (formerly the Wine Council of Ontario), is a non-profit trade association whose mission is to champion and advocate for the growth and success of Ontario VQA wine producers, representing over 100 wineries across Ontario. NEC senior staff met with members of the OCW, in August of 2021 and September of 2022 to discuss opportunities and issues that remain of concern to their member groups, as they relate to the NEP agricultural policies. The OCW made an additional submission to the NEC on October 25, 2022, outlining remaining concerns with how the 2017 NEP addresses agriculture in the NEP Area, including defining “good” or “normal” agricultural practices in the context of O. Reg. 828/90, concerns with remaining winery policies, OFDUs and ARUs, seasonal/temporary events, and on-site accommodations beyond that currently permitted by the NEP.

*Ontario Federation of Agriculture*

The Ontario Federation of Agriculture (OFA) represents more than 38,000 farm family members across the province, and advocates for and supports their membership and the agri-food industry on issues, legislation, and regulations under all levels of government. The OFA and its member groups have made submissions in support of a proposed amendment to the NEP Escarpment Protection Area Part 1.4.3.2 respecting OFDUs and ARUs being permitted in prime agricultural areas only. The OFA is supportive of an amendment to Part 1.4.3.2 to be consistent with the Permitted Use of the Escarpment Rural Area, identifying that such an amendment would have the potential to streamline the policies, and in doing so improve economic potential within the Agri-Food System by providing Ontario Farmers in these areas with the opportunity to diversify their farm business.

## Initiating the Amendment

Section 6.1(3) of the *NEPDA* provides that: “*Where, in the opinion of the Commission, an application for an amendment does not disclose a planning justification for the amendment, is not in the public interest, is without merit, is frivolous or vexatious or is made only for the purposes of delay, the Commission shall inform the Minister of its opinion and, where the Minister concurs in that opinion, the Minister shall inform the applicant in writing of his or her opinion and notify the applicant that unless the applicant makes written representations thereon to the Ministry within such time as the Minister specifies in the notice, not being less than 15 days from the time the notice is given, the provisions of this Act in respect of the considerations of the amendment shall not* apply, and approval of the amendment shall be deemed to be refused.”

Matters raised in the review of the proposal at this stage are noted to assist in coming to a determination if the application should be initiated under s. 6.1(2) of the NEPDA, and if so, to also provide the commenting agencies and the public with an initial understanding of the application. **The planning considerations as presented are not a complete review or analysis of the final merits of the application either in terms of the NEP or any other relevant legislation or regulation.**

In reviewing the proposed amendment, several key issues must be addressed. All amendment proposals must be considered against the Purpose and Objectives of the NEPDA*,* and the Objectives and provisions of the NEP, and be consistent (to the extent appropriate), with the other provincial policies.

## Justification for the Amendment

In order to initiate an Amendment, the NEC under Section 6.1(2.1) of the NEPDA must be satisfied that the Amendment is justified and worthy of consideration; however, even if the proposed Amendment is justified at this stage, this is not an endorsement of the eventual approval of the Amendment in whole or in part. As identified in Part 1.2.1 of the NEP, the justification for a proposed amendment to the NEP means that there is a sound and defensible rationale for the amendment, as well as reasons, arguments, or evidence in support of the change to the Plan proposed through the amendment.

NEP Section 1.2.1 Plan Amendments provides that the Plan may be amended if:

* the Purpose and Objectives of the NEPDA and the NEP are met;
* justification for the amendment is provided; and,
* it can be demonstrated that the proposed amendment and the expected impacts resulting from the proposed amendment do not adversely affect the Purpose and Objectives of the *NEPDA*.

The justification for supporting the initial consideration and processing of this amendment for a) the addition of a Permitted Use to Part 1.3.3 Escarpment Natural Area, b) a revision to the NEP Escarpment Protection Area Part 1.4.3.2 permitted Use respecting OFDUs and ARUs, and c) the inclusion of additional policies in Part 2.7 Development Affecting Natural Heritage, is as follows:

* 1. The amendment, as proposed, does not conflict with the Purpose and Objectives of the NEPDA and NEP, and in general, would be supportive of the compatible management of land and resources within the NEP.
  2. The amendment, as proposed, would not be contrary to the Objectives and Permitted Uses of the applicable Land Use Designations of the NEP.
  3. The existing Development Criteria of the NEP further support the amendment as proposed, specifically concerning the policies related to promoting and protecting Agriculture.
  4. The amendment is consistent with the PPS which sets out policies for prime agricultural areas which are intended to protect these areas for long-term use for agriculture and includes policies that support a diversified rural economy and promote the protection of agricultural and other resource-related uses on rural lands.
  5. The amendment is consistent with the Greenbelt Plan (Protected Countryside), Oak Ridges Moraine Conservation Plan, and Growth Plan, in supporting agriculture while protecting Key Natural Heritage Features.
  6. The amendment policies are structured to reflect the unique/specialized purpose and program of the NEP.

### Niagara Escarpment Plan

NEP Part 1.2.1 identifies that planning policies and land use designations may be changed by amendment to the Plan, provided that the proposed amendment is consistent with the Purpose and Objectives of the NEPDA and the NEP. The Development Criteria set out in Part 2 of the NEP are to be considered in the assessment of any amendment to the NEP.

Land Use Designation and Designation Criteria

#### Is the Amendment consistent with the Objectives of the Designation and the Designation Criteria in the NEP?

The amendment proposes policies that would be applicable to the Escarpment Natural Area, Escarpment Protection Area and Escarpment Rural Area land use designations. Discussion on how the proposals are consistent with the designation objectives and criteria is as follows:

*Escarpment Natural Area*

The Escarpment Natural Area includes Escarpment features that are in a relatively natural state and associated valleylands, wetlands, and woodlands that are relatively undisturbed. These areas contain natural features that provide essential ecosystem services. They are the most sensitive natural and scenic resources of the Escarpment. The policies aim to protect and enhance these natural areas.

The Objectives of the Escarpment Natural Area are to recognize, protect and where possible enhance the natural heritage and hydrological systems associated with the

NEP Area, to protect the most natural Escarpment features, valleylands, wetlands, and related significant natural areas, to conserve cultural heritage resources, including features and areas of interest to First Nations and Metis communities, to encourage compatible recreation, conservation, and educational activities; and, to maintain and enhance the scenic resources and open landscape character of the Escarpment.

Agricultural lands have a role to play in providing buffers to Escarpment Natural Areas and ensuring that visually they are not compromised. Agriculture, as a land use, is not a significant part of lands designated Escarpment Natural Area; however, existing agricultural operations are permitted to continue within the designation.

The amendment proposals continue to support the Objectives of the Escarpment Natural Area designation while supporting compatible agricultural uses.

*Escarpment Protection Area*

Escarpment Protection Areas are important due to their visual prominence, environmental significance, and their role as buffers to the prominent and sensitive Escarpment Natural Area features. They are often more visually prominent than Escarpment Natural Areas and include Escarpment-related landforms and natural heritage and hydrologic features that have been significantly modified by land use activities such as agriculture or residential development.

The Objectives of the Escarpment Protection Area include maintaining and enhance the scenic resources and open landscape character of the Escarpment, to buffer the prominent Escarpment features, to recognize, protect, and where possible enhance the natural heritage system associated with the NEP Area and protect natural areas of regional significance, to conserve cultural heritage resources, including features and areas of interest to First Nation and Metis communities; and, to encourage compatible recreation, conservation, and forest management activities.

Agriculture is a Permitted Use within the Escarpment Protection Area. Visually, the Escarpment Protection Areas are some of the most visually prominent within the NEP Area. Agricultural lands, both prime agricultural and rural areas may contribute to the open landscape character of the area. Providing a buffer to prominent Escarpment features is an Objective of this Designation, agriculture lands may provide such a buffer. Maintenance of agricultural lands is therefore a goal within the Escarpment Protection Area.

The amendment proposals are found to support the Escarpment Protection Area designation.

*Escarpment Rural Area*

Escarpment Rural Areas are an essential component of the Escarpment corridor, including portions of the Escarpment and lands in its vicinity. One objective is to encourage agriculture and protect agricultural lands and prime agricultural areas. Agriculture, agriculture-related uses, and on-farm diversified uses are permitted uses within the Escarpment Rural Area. This designation is the most likely to have the largest extent of active agricultural operations. Escarpment Rural Areas are also intended to provide a buffer to the more ecologically sensitive areas of the Escarpment. The objectives call for the maintenance of scenic values and open landscape character and encourage agriculture as a compatible land use to conserve the traditional cultural landscape.

The proposed amendments are supportive of and consistent with the Escarpment Rural Area designation.

*Other NEP Land Use Designations*

The proposed policies have less material impact within the Urban, Minor Urban, and Recreation Areas of the NEP. In the case of Urban Areas, Minor Urban Centres and Escarpment Recreation Areas, the policy framework of the NEP requires that municipalities prepare official plans that are consistent with the NEP. If agricultural lands still exist in such areas, the municipality may introduce policies that are consistent with the NEP policies. The test will be whether they comply with the PPS (and the Protected Countryside of the Greenbelt Plan, should it apply). The municipality may or may not choose to introduce the provisions based on local planning concerns and municipalities may have policies that are more restrictive than the Provincial policies, to the extent of any conflict.

Mineral Resource Extraction Areas would be largely unaffected by the policy proposals. Although agriculture, agriculture-related uses, and on-farm diversified uses are permitted uses in such areas, the expectation is that if the lands are under an active approved *Aggregate Resource Act* licence and NEC Development Permit, that such areas will be or have been mined. Post-extraction rehabilitation is expected to include redesignation under the NEP and may return to agricultural uses, at which time the respective NEP policies may apply, if introduced into the NEP.

#### Is the Amendment consistent with the Provincial Policy Statement (PPS), Greenbelt Plan, Places to Grow, and local planning documents?

Discussion has been provided earlier in this report (Section B), concerning the planning framework that the proposal is required to be assessed against, and the consistency of the proposal with the PPS (2020), Growth Plan, local Official Plans, and the other

provincial plans. Circulation of the proposal to the affected ministries, municipalities, and conservation authorities will allow for further evaluation of the proposal against the applicable provincial and municipal planning policies and other guidelines.

As noted previously, provincial plans take precedence over the PPS to the extent of any conflict. The specific regulatory and policy regime in the NEPDA and NEP has a unique purpose that may sometimes supersede broad-based provincial agricultural policies and guidelines.

1. **CONCLUSIONS**

Staff advises that should the Commission endorse proceeding with the processing of the amendment proposal at this time (i.e., circulation and request for comments), doing so does not represent an endorsement of the eventual approval of the amendment application in whole or in part. Staff will consider any comments received through the circulation of the proposal and return to the Commission with a comprehensive policy analysis and final recommendations.

Concerning further consideration of the public interest, public agencies and special interest stakeholders may bring additional insight on matters related to the public interest and the Public Interest Advisory Committee (PIAC) would also convene to provide advice and recommendation on the proposal.

**RECOMMENDATION**

That the Niagara Escarpment Commission instructs staff to process the proposed Amendment PC 225 22 for circulation and notification pursuant to Section 6.1(2) of the *Niagara Escarpment Planning and Development Act.*

### Attachments

Appendix 1 Proposed Amendment Document Appendix 2 Circulation and Notification Document

### Prepared By: Approved by:

Original signed by: Original signed by:

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Lisa Grbinicek, RPP, MCIP Kathy Woeller

Senior Strategic Advisor Director

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**** **APPENDIX 1**

November 16, 2022

**AMENDMENT DOCUMENT**

**RE: NIAGARA ESCARPMENT PLAN AMENDMENT PC 225 22**

**Agricultural Policies Amendment**

### Recommendation:

That the Niagara Escarpment Commission initiate the attached proposed amendment pursuant to S. 6.1(2) of the *Niagara Escarpment Planning and Development Act.*

### Prepared by:

### Original signed by:

### \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lisa Grbinicek, RPP, MCIP Senior Strategic Advisor

### Approved by:

Original signed by:

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Kathy Woeller Director

**Proposed Amendment PC 225 22 to the Niagara Escarpment Plan**

**Amendment to the policies respecting on-farm diversified uses and agricultural-related uses in the Escarpment Protection Area and other agricultural-related housekeeping matters**

# November 16, 2022

**Table of Contents**

### Part A – The Preamble Part B – The Amendment

**PART A – The Preamble Purpose:**

To undertake a general amendment to the Niagara Escarpment Plan (NEP) to revise specific policies respecting agricultural uses, on-farm diversified uses, and agriculture- related uses to better support and enhance the Agricultural System and the long-term economic prosperity and viability of the agri-food sector, while ensuring that the Purpose and Objectives of the NEP are upheld.

### Area:

The entire Niagara Escarpment Plan Area

### Initiator:

Niagara Escarpment Commission (NEC)

### Basis:

Under Section 6.1(2) of the *Niagara Escarpment Planning and Development Act* (*NEPDA*), the NEC may initiate an amendment to the NEP, provided that the NEC is satisfied that the amendment is justified.

This proposed amendment is the result of monitoring five years of implementation of the 2017 NEP agricultural policies and considering submissions from key agricultural stakeholders and individual landowners. The proposed amendment will strengthen and provide greater clarity and consistency to the current policies respecting agricultural development in the NEP Area.

The revisions to existing policies and the introduction of new policies related to agricultural uses, on-farm diversified uses, and agricultural-related uses proposed to be introduced in the NEP through the amendment are found to be consistent with the Purpose and Objectives of the *NEPDA* and the NEP, and further, recognize that agricultural uses have the potential to be compatible land uses that can contribute to maintaining the Escarpment’s open landscape character and cultural heritage landscape.

The proposed amendment also respects other provincial legislation including the Greenbelt Plan and Oak Ridges Moraine Conservation Plan as well as the Provincial Policy Statement. The amendment will ensure a consistent and coordinated approach to agricultural uses and agricultural development through the various provincial plans and legislation.

### Part B – The Amendment

**Part 1 Land Use Policies is amended by adding the following Permitted Use under Part 1.3.3 Permitted Uses of the Escarpment Natural Area designation:**

15. Maple sugar harvesting (for greater certainty, this includes the tapping of trees, and collection of sap, and does not include the development of buildings or facilities related to maple syrup production).

### Part 1 Land Use Policies Permitted Use Part 1.4.3 Escarpment Protection Area, Permitted Use 3 is amended as follows:

3. Agriculture-related uses and on-farm diversified uses.~~, in~~ *~~prime agricultural areas~~*

### Part 2.7 Development Affecting Natural Heritage is amended by adding a new subsection 2.7.2 which shall read:

2.7.2 f) Expansions to *Existing uses* that are *Agricultural uses, agricultural-related uses and on-farm diversified uses* **outside of *wetlands,* provided there is no alternative and the expansion or alteration in the feature is minimized and where possible, temporary.**

### Part 2.7 Development Affecting Natural Heritage is amended by adding a new sub-section as follows:

Notwithstanding Part 2.7.2, *Agricultural uses, agricultural-related uses, and on-farm diversified uses* may be permitted in an Earth Science Areas of Natural and Scientific Interest, which is not also identified as any other Key Natural Heritage Feature, provided it has been demonstrated that the earth science values can be maintained and protected. Planning, design, and construction practices shall be identified that will keep disturbance to landform character to a minimum and ensure the protection of the geological or geomorphological attributes.

### The following definition is added to Appendix 2 Definitions:

***Earth Science Values*:** values that relate to the geological, soil, and landform features of the environment.

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**** **APPENDIX 2**

November 16, 2022

**CIRCULTION AND NOTIFICATION**

**RE: NIAGARA ESCARPMENT PLAN AMENDMENT PC 225 22**

### Agricultural Policy Amendment

**Plan-wide**

**BACKGROUND:**

1. Section 7 and 10 (1) of the *Niagara Escarpment Planning and Development Act* (*NEPDA*) require that the Niagara Escarpment Commission (NEC) furnish each affected ministry and municipality, within or partially within the Niagara Escarpment Planning Area, with a copy of the proposed amendment to the Niagara Escarpment Plan and invite the ministries and municipalities to make comments on the amendment to the Commission.
2. Section 10(1) (b) of the *NEPDA* requires that notice of the proposed amendment be published in such newspapers having general circulation in the Niagara Escarpment Planning Area as the Commission considers appropriate.
3. The NEC is also required to post the amendment on the Environmental Registry (ER) for public notice and comment.
4. The NEC as a matter of practice also circulates to Indigenous communities and other public agencies and stakeholders where the Commission believes there may be an interest (e.g., conservation authority).

The notice period under the *NEPDA* is 60 days; however, the NEC may extend the time if, in the Commission’s opinion additional time for commenting becomes necessary.

**PURPOSE:**

The purpose of this Report is for the Commission to approve the recommended circulation and notification list for NEP amendment PC 225 22.

**RECOMMENDATION:**

That the Commission instruct staff, pursuant to the *NEPDA*, to circulate the proposed amendment to ministries and municipalities, provide notice in newspapers, and on the NEC website, and have the amendment posted on the Environmental Registry (ER).

Staff will also circulate Indigenous communities and additional agencies and stakeholders that may have an interest or have indicated an interest in the amendment, including property owners or their agents. The recommended comment period is 60 days.

Required circulation and notice as follows (in accordance with S. 10(1) of the *NEPDA*): Municipalities and Ministries

All municipalities in the NEP Area

Ministry of Natural Resources and Forestry Ministry of Environment, Conservation and Parks

Ontario Ministry of Agriculture, Food and Rural Affairs Ministry of Municipal Affairs and Housing

Ministry of Heritage, Sport, Tourism and Culture Industries Others

Indigenous communities Conservation Authorities Ontario Craft Wineries

Ontario Federation of Agriculture Grape Growers of Ontario

Christian Farmers’ Federation of Ontario Beef Farmers of Ontario

Fruit and Vegetable Growers Association

Newspapers

St. Catharines Standard Niagara This Week Hamilton Spectator

Georgetown Independent Free Press Milton Champion

Burlington Post Caledon Enterprise Orangeville Banner

Collingwood Enterprise-Bulletin Owen Sound Sun Times Wiarton Echo

Public Interest Advisory Committee

### Prepared By: Approved by:

Original signed by: Original signed by:

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Lisa Grbinicek, RPP, MCIP Kathy Woeller

Senior Strategic Advisor Director